

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE GAXIOLA,

Petitioner,

vs.

JACK PALMER, *et al.*,

Respondents.

3:06-cv-0516-RCJ-RAM

ORDER

This action is on a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 by pro se petitioner Jose Gaxiola, a Nevada prisoner. The Court entered its order denying the petition on the merit and entered judgment on June 17, 2011. Some six months later, petitioner filed the instant motion for reconsideration pursuant to Fed. R. Civ. P. 60(b). ECF No. 35. The motion is unopposed. It is also without merit.

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

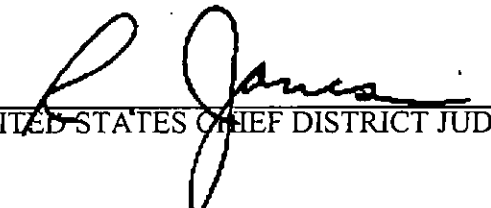
(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

1 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
2 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
3 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
4 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal.
5 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987).

6 In his motion, petitioner contends that he has newly discovered evidence that he is
7 actually innocent because he was not living in Las Vegas at the time the crimes occurred. This fact,
8 whether true or false, cannot be considered newly discovered evidence under Rule 60(b), because it
9 is clear that petitioner knew or should have known of his whereabouts at the time of trial. The
10 motion shall be denied.

11 **IT IS THEREFORE ORDERED** that the Motion for Relief From Judgment (ECF
12 No. 35) is **DENIED**.

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14 DATED this 11th day of May, 2012.

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UNITED STATES CHIEF DISTRICT JUDGE